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Industrial democracy in West Germany: Co-determination and participation

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INDUSTRIAL DEMOCRACY IN WEST GERMANY:
CO-DETERMINATION AND PARTICIPATION

A Thesis

Presented to the

Department of Political Science

and the

Faculty of the Graduate College

University of Nebraska

In Partial Fulfillment

of the Requirements for the Degree

Master of Arts

University of Nebraska at Omaha

by

John A. Witt

July, 1981

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THESIS ACCEPTANCE

Accepted for the faculty of the Graduate College,
University of Nebraska, in partial fulfillment of the
requirements for the degree Master of Arts, University of
Nebraska at Omaha.

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PREFACE

The theory and practice of democracy may be viewed from many different perspectives: (1) as a means of achieving higher ends; (2) as a political method for the allocation of finite resources; (3) as a protective system to guard the people from one another; (4) as an authority structure in which everyone is to have a semblance of equal say; (5) as a way to alleviate and resolve power conflicts among competing factions; (6) as a way of representing the masses in complex political affairs; (7) as an aspect of the distinctive and often unique culture of a particular nation.

Whatever the perspective, democracy may be perceived, especially in the United States, as pertaining to public policy making, that is, political democracy. There is also the concept of industrial democracy which is, simply stated, political democracy applied to the workplace. Proponents of industrial democracy contend it may provide new impetus to a stagnating political democracy through the realization of the democratic goal of participating in decisions affecting one's life, including worklife. It is my firm belief that industrial democracy enhances the attainment of this goal through not only economic benefits, but that the participation experience gained from the work place greatly increases the

political socialization of the "industrial democrat."

The Federal Republic of Germany is a nation which has legislated a system of industrial democracy, and thereby provides an opportunity to examine the consequences of a post-industrial society attempting to securely establish political democracy. Pertinent reasons for studying industrial democracy in West Germany are threefold: first, West German labor-management relations have long been concerned with industrial democracy and both labor and management have adopted as their form of industrial democracy co-determination, the particular subject of this thesis. Second, I place a high premium on the actualization of industrial democracy in post industrial societies. And third, the nature and implications of industrial democracy have only recently come to the attention of political scientists.¹

Several questions may be addressed in considering co-determination in West Germany and its implications for other economically advanced nations. How successfully have the West Germans transferred democracy to industry? Can the practices and attitudes necessary for industrial democracy be successful in light of the traditional authoritarianism of West German industry? In a general context and not limited

¹Edward S. Greenberg, "Industrial Self-Management and Political Attitudes," The American Political Science Review 75 (March 1981): 29-43, cf. J. Maxwell Elden, "Political Efficacy at Work: The Connection Between More Autonomous Forms of Workplace Organization and More Participatory Politics," The American Political Science Review 75 (March 1981): 43-59.

to the Federal Republic, one could ask whether industrial democracy in any form is compatible with mass technological, bureaucratic society? How much democracy in industrial decision-making is possible without detrimental interference with the efficiency of production? What conditions best facilitate the practice of industrial democracy? What are the implications, not only in West Germany but elsewhere, of instituting industrial democracy? The list of questions may go on and on, ad infinitum, but the particular questions addressed by this thesis are: what historical political influences and forces do and will condition the pattern of industrial democracy, in this case West German co-determination, and which cultural factors have made co-determination into a system maintenance implement rather than a system change implement?

Unfortunately, due to my lack of German language skills, the research for the thesis has had to be limited to English language translations of primary sources and other available secondary sources. There is a plethora of original German works and writings on co-determination which were inaccessible due to my limitations, but if possible should be considered and consulted.

Finally, I would like to express my sincere appreciation to Dr. Bruce Garver and Dr. Kent Kirwan for participating on my Thesis Committee and taking an active interest in its proceedings. Also I would like to thank Dr. Orville

Menard for his scholarly advice and encouragement, without which I would surely never have finished this project.

CHAPTER I
AN INTRODUCTION TO INDUSTRIAL DEMOCRACY
IN WEST GERMANY

Many people today identify worker participation in the industrial decision-making process with the sharing of power suggested by industrial democracy. A more restrained attitude is that industrial democracy is simply a method to provide employees with more information on the functioning of their company. Some content that participation inadequately defines the problem, that the proper and more important word is involvement. In fact there is a continual expansion of participation into new areas of politics, and the range of issues which it includes is constantly increasing. Sometimes this expansion is the result of legislation, while other times it is the result of voluntary actions and agreements.

In the broadest sense of the term, worker participation covers three wide areas: (1) the way in which employees influence, or are enmeshed in, the decision-making process of industrial enterprises; (2) job satisfaction and work organization, i.e., improving the quality of the job, making the job more interesting, and defining the social organization of work details; (3) financial participation, which can include profit sharing and employee stockholding, essentially a

more equitable way of distributing capital.¹ These are diffused areas of participation, and any specific example of participation will include more than one--such as work groups being responsible for organizing their own plan of operation within the general production guidelines of the plant. Indeed, no one particular form of participation is mutually exclusive, and in any situation the complete pattern of participation must be seen as a coherent whole.

This thesis contends that patterns of participation are not mutually exclusive and no one pattern will adapt itself to every case, for what is correct in one situation may be quite inappropriate in another. Participation within an organization has to be endogenous and molded to the particular set of circumstances that are prevalent at the moment. The form of participation depends, among other things, on the type of industry, its history, particularly of industrial relations, the size of the concern, the level of expectation among the employees, and no less important, the political structure that sets the parameters for these operations. Worker participation in an iron works factory with 3,000 employees will be markedly different from that in a large retail store. And neither pattern will bear any more than a cursory resemblance to what might be considered correct for a small bakery primarily employing women as part-time

¹D. Wallace Bell, Industrial Participation (London: Pitman Publishing Ltd., 1979), pp. 220-221.

employees. Even within a single company, the pattern of participation will often vary considerably from one section to another.

In examining worker participation, one needs to be clear about purposes. There are three basic and essential purposes: (1) to improve the quality of working life and the satisfaction workers gain from work; (2) to improve the quality of production and enhance efficiency within enterprises; (3) to give workers greater experience in and knowledge of the affairs which affect their lives. These are complimentary purposes and may be considered equally important. Experience gained from conditions at work promises to allow the potential of participation fully to develop. It is the potential of democratizing the workplace which gives industrial democracy its impetus and it is the experience with industrial democracy that will breathe new life into political democracy.²

In the last three decades, many Western European nations, such as Norway, Denmark, Sweden, and the Netherlands, have independently followed the example set by West Germany in actively supporting industrial democracy through the use of various forms of co-determination. Co-determination has been introduced into the social and economic lives of the aforementioned nations through legislation and regulation.

²Carole Pateman, Participation and Democratic Theory (Cambridge: Oxford University Press, 1970); and G.D.H. Cole, Self Government in Industry (London: G. Bell and Sons, 1918).

A common theme to all co-determination legislation in Western Europe is participation by labor representatives in the decision-making processes of industrial organizations. Co-determination laws are usually accompanied by additional legal restrictions on the rights of management, restrictions that primarily resolve and clarify any problems of interpretation and implementation that may be generated by the co-determination laws. The political significance of co-determination arises from the resulting reallocation of authority, responsibility and, hence, power. An analysis of co-determination in the Federal Republic of Germany must then consider both the particular content of the various laws and what effect these laws have upon the peculiarities of West German political socialization.³

The Federal Republic of Germany was selected as the subject of analysis for numerous reasons. First, it is the most populous and industrialized nation of Western Europe. Second, its level of industrialization is rivaled only by France and Britain. Third, and perhaps most importantly, the abysmal condition of Germany after the Second World War created (particularly in the western sectors) the opportunity to begin the political resocialization of the people with what could be called "a clean slate."

Co-determination in industrial decision-making has been a goal of the German (West German after 1945) labor

³Ralf Dahrendorf, Society and Democracy in Germany (Garden City, New York: Doubleday and Company, Inc., 1969), p. 161.

movement and of its political ally, the Social Democratic Party (SPD), almost since their inception in 1875. The struggle to assure worker representation on the boards of industrial and other enterprises reached a milestone on July 1, 1976, when legislation extending the coverage of worker "Mitbestimmung" (co-determination) went into effect.⁴ The event did not give rise to any wild jubilation within the German Trade Union Federation (DGB) or within the SPD, for the 1976 co-determination law did not provide for full-parity representation for labor with managers and shareholders as demanded by both the DGB and the SPD. Instead the law arranged matters in such a way that on issues on which labor and capital representatives disagreed, the latter would prevail.

This deficiency of the 1976 law, from the employees' perspective, can be traced chiefly to the fact that the coalition of the SPD and the Free Democratic Party (FPD), which has governed the Federal Republic of Germany since 1969, had not been able to disagree on the terms of the co-determination legislation. The Free Democratic Party, representing

⁴While the emphasis of this thesis is on West Germany, hence post-1945, the historical development of the German labor movement and its relation to the post-1945 institution of co-determination cannot be neglected. Recommended sources on the pre-1945 German labor movement include: Gerlad D. Feldman, Army, Industry, and Labor in Germany: 1914-1918 (Princeton: Princeton University Press, 1966); Fritz Fischer, War of Illusions: German Policies from 1911-1914 (New York: Norton Press, 1975); and Richard N. Hunt, The Creation of the Weimar Republic: Still Born Democracy? (Lexington, MA: D.C. Heath and Company, 1969).

mainly business and professional people, had resisted full-parity co-determination until the end and had forced a compromise formula on its larger, coalition partner.⁵ That the political climate on such matters had probably been assessed correctly by the FPD was confirmed by the results of the national elections held on October 3, 1976, in which the so-called social-liberal coalition of SPD and FDP barely retained power. The opposition Christian Democratic Union (CDU) and its Bavarian counterpart, the Christian Social Union (CSU), captured 48.6 percent of the popular vote and reduced the SPD-FPD majority in the Bundestag from forty-six to ten seats.

Neither the passage of the 1976 law nor the results of the two subsequent elections has assuaged the demands of the unions for full-parity co-determination. The conviction that only by gaining a fully equal voice with management could industrial democracy be achieved is deeply rooted in the West German labor movement.⁶ But a full understanding of this phenomenon cannot be attempted without working definitions which describe the terminology of co-determination.

Industrial democracy is the transfer of political democracy to the workplace. Co-determination is the

⁵Guido Goldman, The German Political System (New York: Random House, Inc., 1974), p. 138.

⁶E.C.M. Cullingford, Trade Unions in West Germany (Boulder, CO: Westview Press, 1976), p. 95.

realization of some aspects of political democracy in the workplace, such as: one man, one vote; representative government which is freely elected; responsibility and accountability; and the right of petition.⁷ In order to establish and maintain co-determination, it is necessary to have some form of organizational infrastructure, and all national variations of co-determination have a similar infrastructure to that of West Germany's, with only slight deviations.⁸ The infrastructure of co-determination within a typical West German joint-stock company will consist of the general meeting, the supervisory board, the management board, the labor director, and the works council.

The general meeting is a meeting of the shareholders. Usually the meeting takes place once a year, at which time the voting right is determined by the amount of shares a person owns. The general meeting is above all responsible for the following matters: any increases or decreases in capital; any change in form, merger, or dissolution of the company; election and dismissal of supervisory board members; utilization of the annual profit; and the approval of acts of the management board and supervisory board. In reality,

⁷David Jenkins, Job Power: Blue and White Collar Democracy (New York and Baltimore: Penguin Books Inc., 1974), pp. 3-4.

⁸Roger Harrison, Worker's Participation in Western Europe: 1976 (London: Institute of Personnel Management, 1976), passim.

however, its legal and factual possibilities of exerting influence are by far fewer than one would assume on the basis of this catalogue of formal rights.

The supervisory board, in practice, has a considerably stronger position than the general meeting. Its major tasks are the appointment and dismissal of the management board as well as the supervision of the company's management. Moreover, the bylaws of the company or the supervisory board itself may provide that certain matters require the consent of the supervisory board. It is quite usual that investment and extensions above a certain financial volume, credits and loans above a certain limit, as well as the recruitment and dismissal of managerial staff will require supervisory board consent. For all reasons the supervisory board, which in contrast to the general meeting meets twice to four times a year, has considerable influence on the fundamental managerial decisions of the company.

The management board conducts the day-to-day business of the company on its own cognizance. It has not only entrepreneurial functions in the narrow sense of the word but also functions as a supervisor of the company's employees. The functions of the management board are assigned to its individual members so that each member is responsible for a particular field (i.e., technical, commercial, and financial matters) or for a particular division of the company. Irrespective of his/her special tasks, each management board

member is responsible for overall company policy within the factory or plant.

A labor director (or workers' director) is to be appointed as a full member of the management board. The labor director is appointed under the same conditions as other members of the management board, e.g., by the supervisory board. Therefore, employees have no veto power. The labor director has specific competences in staff and social matters also. These include: arranging sick-leave; preparing vacation packages; and allocating over-time work to employees.

The works council safeguards the interests of the employees in dealings with the employer. Works councils are to be elected for a term of office of three years in any company of private industry with at least five employees which have voting rights. An employee is considered to have voting rights if he/she is an adult and works full-time.⁹ Employers and managerial employees are not represented on the works council. Works councils have far-reaching rights of participation and co-determination in matters concerning the structuring, organization and design of jobs, operations and the working environment, manpower planning and personnel

⁹Taking account of the special interests of both young employees, who usually have not yet completed their training, and of the disabled, the works council provides for youth delegations and representatives of the disabled to look after the interests of these categories of employees.

management, as well as in-plant training. The works councils have a genuine right of co-determination in a series of matters such as: working hours, e.g., the introduction of short-time work; the introduction and use of technical devices designed to monitor the behavior or performance of the employees; the assignment and notice to vacate company-owned accommodations; and the fixing of job and bonus rates and comparable performance related remuneration.¹⁰

"Reform from above, rather than revolution from below" has been the political maxim of Germany since the advent of the Second Reich, and it is no different today in West Germany. The West Germans have shown a propensity to avoid domestic and industrial conflict whenever possible. Consequently, they have placed enormous faith in legislation and mediation to resolve many social and political problems. Since the scope and content of West German social legislation is very inclusive and extremely detailed, an inspection of the entire subject would be lengthy and out of place considering the subject of this thesis.¹¹ What is proposed is an examination of the most important and relevant legislation

¹⁰Adolf Strumthal, Workers Councils: A Study of Workplace Organization on Both Sides of the Iron Curtain (Cambridge: Harvard University Press, 1964), p. 63.

¹¹See Hajo Holborn, Germany and Europe: A Historical Essay (Garden City, N.Y.: Doubleday and Company, 1970) and Richard N. Hunt, German Social Democracy: 1918-1933 (New Haven, Connecticut: Yale University Press, 1964).

concerning co-determination. Chapter Two will provide a historical perspective of the German (after World War II, the West German) labor movement in relation to its goal of industrial democracy. What is necessary is to develop the salient factors in the labor movement that have been the most influential in labor's acceptance of co-determination as a way of industrial life.

The third chapter will examine co-determination legislation passed by the West Germany Parliament, providing a critical analysis of both the content and intent of these laws which are not numerous, but legalistic and complex. Within the parameters of these laws, all subsequent legislation has been enacted. The affectations of the major co-determination laws upon West Germany have reshaped many aspects of society. Significantly, co-determination has given substance to aspirations for industrial democracy in modern post-industrialized West Germany.

Chapter Four discusses the policy and institutional implications and effects of co-determination participation in the current socio-political realm of West Germany. In other words, can participation of workers be effective within the traditional authority structure of contemporary industry? Following from that, should workplace participation be encouraged as a means of allowing the worker to become democratized? The answers to these questions will provide an

indication of the current status of industrial democracy within the context of post-industrial society and serve as a departure point for evaluating the possibility of enhancing democracy, in general, through the structure of co-determination. My analysis is directed towards the goal of a better understanding of the potential of industrial participation (co-determination) and the possibility that participation at the workplace will lead to increased participation in the political decision-making.

Some often neglected aspects of industrial democracy will be the subject of Chapter Five. Perhaps the most neglected aspect is what effect does industrial democracy have upon the "minorities" of the industrial workforce? Migrant and immigrant workers are two of the "minorities," people who have been treated as industrial cannon-fodder by the employers, governments, and even labor unions in the so-called "host" country. Women, as an increasingly larger part of the workforce, are also of special concern. The participation of married women in the process of industrial democracy is dramatically restricted by their socialization and the basic fact that they often bear the burden of two full-time jobs: one as a housewife and mother, and the other as an employee.

Thus Chapter Six will serve two functions. The first function will be an evaluation of the thesis. Has co-determination been successful in establishing industrial democracy

in West Germany? And, has democratization of the workplace been beneficial to political democracy, in a reciprocal relationship? The second function will be to examine the relevance of the West German experience, with its particular form of industrial democracy, co-determination, as a guide and model for other nations of the industrial world.

Participation, co-determination, and industrial democracy are not a panacea. The possibility that through participation in the industrial decision-making process Western man may be able to achieve a higher state of rationality and objectivity may be utopian fantasy. Given growing alienation, apathy, and economic stagnation, industrial democracy may be a social experiment that failed. Co-determination in West Germany has been in effect for little over three decades. In other nations of the West, co-determination (or industrial democracy in any of its forms) has had a much more brief existence. Perhaps a sufficient amount of time has not transpired for a complete examination and evaluation of industrial democracy. However, there is a need for at least an initial investigation of what industrial democracy has accomplished in West Germany.

CHAPTER II

THE HISTORICAL DEVELOPMENT OF CO-DETERMINATION
IN THE FEDERAL REPUBLIC OF GERMANY

For over one hundred years, the German labor movement has sought for workers not only political recognition through political parties and industrial recognition through trade unions, but representation in the governing bodies of industrial enterprises, generally under the slogan of "Mitbestimmung" (loosely translated as worker participation).¹ The fact is that since the days of the Weimar Republic, the German labor movement has been successful in establishing a trade union structure and works councils in industrial organizations, and since World War II has been able to place worker representatives on the governing boards of industrial enterprises, in varying numbers and with greater or lesser successes in having these representatives effectively voice and instigate worker demands.

Given this history, the questions this chapter will examine are these: what has been the record of the German labor movement in achieving worker participation? Why have

¹W. Michael Blumenthal, Co-determination in the German Steel Industry: A Report of Experience (Princeton, New Jersey: Princeton University Press, 1956), p. 15.

the demands for co-determination taken the particular forms associated with the German labor movement? What difference, if any, has co-determination had on the functioning of the West German economy?

West Germany's reconstruction after World War II was not a new beginning in all aspects of politics and society, but a reemergence of some very important and persistent elements of past German life. Perhaps the most important of these were the twin institutions of the labor movement: its political party, the SPD, and its industrial organization, the unified trade union movement. To be sure, the present German Trade Union Federation (Deutsche Gewerkschaftsbund or DGB) differs somewhat from its pre-1933 predecessors, but the major orientation of the trade unions did not change appreciably.² What is most significant in that pre-1933 structure that has survived and that merits attention in understanding the developments of the post-war period?

The German labor movement was the principal focus of the major issues confronting socialism before 1914: revolutionary versus evolutionary socialism, expressed in the contrasting views of Karl Kautsky and Eduard Bernstein.³

²Richard Grunberger, The 12-Year Reich: A Social History of Nazi Germany (New York: Ballantine Books, 1971), pp. 6-7.

³A.J. Ryder, Twentieth-Century Germany: From Bismarck to Brandt (New York: Columbia University Press, 1973), p. 46.

It is not much of an exaggeration to say that in the case of the German labor movement, the voice was often that of Kautsky, but the hand was that of Bernstein; that is to say, the program and the rhetoric were those of Kautsky, but the movement in action was an evolutionary one, eventually abandoning the Marxist tradition in 1959.⁴ Until 1918 and even to 1933, the voice of the SPD was that of class struggle and conflict, and as long as it retained that voice, the SPD sought in vain the achievement of majority party status.

A second important aspect of the German labor movement was its rapid bureaucratization. The labor movement, which originated in a spirit of revolution against the existing state and bureaucracy, seemed to adopt quickly the central features of the system that the movement was dedicated to opposing.⁵ How rapidly this bureaucratization of party and trade union took shape can be judged by the fact that Robert Michels' classic statement of the iron law of oligarchy bears the date 1915, and the subject of his inquiry was the German labor movement.⁶ This bureaucratic heritage continues to leave its mark on the contemporary labor movement. The

⁴Helga Grebing, The History of the German Labor Movement: A Survey (London: Oswald Wolff, 1969), p. 181.

⁵E.C.M. Cullingford, Trade Unions in West Germany (Boulder, Colorado: Westview Press, 1976), pp. 11-12.

⁶Robert Michels, Political Parties: A Sociological Study of the Oligarchical Tendencies of Modern Democracy (New York: The Free Press, 1962), pp. 342-357.

tightness of organization, the discipline that reaches upward, in the degree of obedience to national union leadership constitutes one of the strengths of contemporary organizations. Party and trade unions do not always speak or act in unison, but when they do they constitute a major force in the polity.

A third historical element that will aid in understanding the contemporary labor movement is its commitment to industrial democracy. The most dramatic and significant form of this commitment was the "Works Council Movement," through which the workers desired to take into their own hands the direction not only of industry, but also the state.⁷ The Works Council Movement in Germany was clearly a part of a wider social phenomenon: rejection of parliamentary government and the territorial state, which found expression in Russian soviets and, though in a very different form, Italian corporatism. Here corporatism is defined as "of or pertaining to a political system under which the principal economic functions, as banking, industry, labor, etc., are organized as corporate unities." Yet when the Hohenzollern Monarchy collapsed and the leaders of the SPD took over the state machinery, they found themselves comfortable in their new bureaucratic roles, and in short order were at odds with the Works Council Movement, which threatened the power base the SPD had just acquired. The SPD was not prepared to overturn

⁷Nabagopal Das, Experiments in Industrial Democracy (New York: Asia Publishing House, 1964), pp. 66-68.

completely the government and administrative machinery that seemed to be bulwarks against chaos, and in the end the works councils were restricted to an intra-enterprise scope of action.⁸ However, within that context, the works councils became an established element in German industrial organization, though clearly stripped of most of their functional characteristics. In this they probably fared no worse than the Russian soviets and much better than the Italian corporations. But it is this heritage that has given the German works councils their staying power and that accounts for the manner in which they seem to fit easily into the FRG's social structure.

One of the more dramatic elements of German reconstruction after 1945 was the reemergence of the SPD and the trade union organizations. Though treated with more or less favor, depending on the policies of the occupying power, party and unions provided a framework for the reinstitution of organized political and economic action.⁹ Because these institutions continue to function in the FRG, one more nearly appreciates their role in reconstruction. What is almost forgotten today is that the social climate in the western occupation zones of Germany was decidedly anti-capitalist and strongly reformist. Clauses authorizing socialization of

⁸Sturmthal, Workers Councils, p. 54.

⁹Herbert J. Spiro, The Politics of German Codetermination (Cambridge: Harvard University Press, 1958), p. 21.

the means of production were written into some of the early state constitutions (Hesse, North Rhine-Westphalia), and these clauses advocated far-reaching restraints on the capitalist system.¹⁰ Partly this reflected the social concerns of the Roman Catholic church expressed in the encyclicals of Pope Leo XIII and Pope Pius XI, but the shame and horror felt in western Germany after the demise of Hitler's regime also played a role in producing a liberal, reformist climate of opinion, not duplicated since those early years of reconstruction.¹¹

The reform impetus reached its peak in 1951 when the passage of legislation setting up worker participation in the governing councils of the coal and steel industries.¹² After that, only minor adjustments were made in provisions for worker participation in industrial decision-making, and even the 1976 laws fall considerably short of parity co-determination, the ultimate goal of the labor movement. Under the dual impact of the "economic miracle" and the long tenure of Konrad Adenauer and the CDU, West Germany's social climate became increasingly conservative, with twenty-five years elapsing between the coal and steel bill and the present extension of worker participation. Thus the SPD and the

¹⁰Spiro, The Politics of German Codetermination, p. 37.

¹¹Ibid., p. 58.

¹²Blumenthal, Co-determination in the German Steel Industry, pp. 18-21.

trade unions became integrated into the FRG's polity and society.

Features of the Federal Republic of Germany that help define the significance of industrial democracy are the following. Persistent assertions of the CDU governing elite and of its U.S. supporters notwithstanding, what one can observe in the FRG is not simply a traditional market economy, or even a social market economy where the government has more control over production, but the emergence of democratic corporatism--perhaps pluralistic corporatism would be more accurate. Therefore, while the FRG meets many of the normative standards of a post-industrial, democratic political system, its socio-economic patterns are essentially corporatist; that is to say, social and economic actions take place in a framework of legally defined and publicly sanctioned functional organizations.¹³ Within this context, what has actually developed in West Germany is a pluralistic political system in which the major parties are based in good part, though not entirely, on class voting. In the 1972 national election the SPD had been able to attract white-collar, middle class voters. But in the state elections held between 1972 and 1976, and in the 1976 and 1980 national elections, many of these swing voters seemed to have returned

¹³Samuel P. Huntington, "The Change to Change: Modernization, Development and Politics," Comparative Politics 3:3 (April 1971), pp. 282-322.

to their natural conservative homeland in the CDU/CSU.¹⁴

In this respect the Federal Republic of Germany must be distinguished from the group politics system of the United States. Certainly the appearances are similar; in both, there are labor organizations, business organizations, religious groups, and so on, attempting to influence public policy. In the United States patterns of participation are relatively amorphous and organized groups have independent rights of input, social life, and economic decision-making, which to a certain extent have no connection with individual organizations. The participation may be as casual or as formal as the particular groups decide upon.

In West Germany, by contrast, functional organizations in society and economy have structures, procedures, and so forth defined by law, and their interactions take place in the confines of governmental procedures. Furthermore, these functional organizations are entitled to be consulted and have a significant voice in shaping public policy regarding their particular economic or social sectors.¹⁵ Seen from either a "right" or "left" perspective, worker participation in industrial decision-making might be no more than a clever device to calm and co-opt the workers' demands. But perceived from the strong tradition of socio-

¹⁴Stephen Smith, "The Politics of Success," Time, October 13, 1980, p. 60.

¹⁵Dahrendorf, Society and Democracy in Germany, p. 197.

economic corporatism, demands to have worker representatives on enterprise boards is a legitimate method of making demands and assuring their satisfaction in a corporatist system. Much of the debate involving co-determination becomes unintelligible when seen from the viewpoint of industrial relations in Great Britain or the United States. It requires the historical context of the German (after World War Two the West German) labor movement and contemporary West German politics to gain an accurate investigation of these developments.

One final element of the post-1949 historical context must be specified: the dynamics of coalition politics, already briefly noted, which has shaped the impetus of national policy since 1966. Initially with the "Great Coalition" of 1966-1969, the SPD, participating in the government for the first time since the Weimar Republic, attempted to change the FRG along lines congenial to its own basic ideology and policy preferences.¹⁶ The "Great Coalition" was succeeded in 1969 by the present governing coalition in which the SPD became the senior partner, but remained dependent on the FPD for a majority of the Bundestag.¹⁷ After having successfully tackled "Ostpolitik"

¹⁶Guido Goldman, The German Political System, p. 116.

¹⁷The narrow margin by which the social-liberal coalition remains in power at the national level is further complicated by the manner in which the federal system divides power without necessarily dividing responsibility in the same measure.

in the first three years of its tenure, the social-liberal coalition then attempted to enact major domestic policy reforms, but with little success, for the bipartisan agreement on "Ostpolitik" was replaced by persistent and often major disagreement on social policy. As a result, the SPD was unable to redeem more than a fraction of the far-reaching social programs on which it had contested the 1976 election: co-determination, profit sharing, and urban land use regulation. The present coalition has definitely abandoned any hope for the last two, in good part because of the energy crisis and the subsequent economic slow-down. To what extent it was able to pass worker participation legislation that approached the full-parity goal of the trade unions will be examined in Chapter Three. It is in this historical context that one may approach an analysis and understanding of co-determination legislation in the Federal Republic of Germany.

CHAPTER III

THE PRESENT LEGAL STATUS OF CO-DETERMINATION
IN THE FEDERAL REPUBLIC OF GERMANY

It may appear to be rather perplexing to an outside observer of the West German labor relations scene that the post-World War Two political struggle over labor co-determination has resulted in the enactment of three different pieces of legal regulations, with differing coverage and varying degrees of labor participation in the managing of business firms. However, this seems to be typical of the West Germans to resolve labor-management disputes with legislation. This chapter will present the major laws and amendments concerning co-determination and workers' participation in West German industry.

After the Second World War, the West German trade unions, congenial with the declared intentions of the British occupying forces, endorsed proposals to nationalize the "montan" industries (mining and iron and steel producing industries) in the British occupied zone.¹ The changing socio-economic climate during the ensuing years showed, however, that such a solution was politically unattainable, and

¹Jenkins, Job Power, pp. 116-119.

a compromise was found in a somewhat different direction. British control had brought about a full-parity solution that amounted to an equal share of seats for the shareholders and the employees in the supervisory council of the decartelized business firms, in the montan industries.² Furthermore, the unions obtained the right to nominate candidates for the newly established position of the so-called labor director, an equal-ranking member of corporate executive boards.³

The first post-war West German Bundestag of 1949 saw an unexpected majority for the conservative parties (CDU, CSU, FPD, and German Party, as well as several splinter parties), viz. 256 seats as opposed to 146 seats for the left bloc, which was comprised of the SPD (131) and the German Communist Party (KPD) (15). The preliminary parity solution for the montan industry, introduced under the auspices of the British occupation forces, was endangered. Under the massive threat of nationwide strikes, and after heated discussion in and out of the Bundestag, the West German government was forced to single out the montan complex for separate legislative treatment. The post-war controversy over co-determination in the montan industry culminated in the "Act

²W. Michael Bluenthal, Co-determination in the German Steel Industry, p. 19.

³F.E. Emery and Einar Thorsrud, Form and Content in Industrial Democracy: Some Experiences from Norway and Other European Countries (London: Tavistock Publications Ltd., 1964), pp. 44-47.

on Co-determination of Employees in the Supervisory Councils and Executive Boards of the Business Firms in the Mining and Iron and Steel Producing Industries" of 1951, the Montan Act.⁴

The Act applies to all firms in the mining and iron and steel industries if they are operated under the charter of a corporation, are a limited liability company or a joint company of mine owners, and if they have in general more than 1,000 employees.⁵ If the firm's charter does not require the institution of a supervisory board, such a board has now to be organized. The supervisory board consists of eleven elected members, whereby both the shareholders and the employees respectively nominate four members and an additional external member each. The law stipulates that the external members may be neither a representative of a trade union nor of an employer organization nor employed by that firm or otherwise connected with it in some economic way.⁶

The electing body for all nominated members of the supervisory board is the shareholders' general meeting, which usually convenes twice yearly. The general meeting

⁴The Montan Act is reprinted in International Labor Organization, Co-determination in the Federal Republic of Germany (Geneva: International Labor Organization, 1976), cited hereafter as ILO.

⁵ILO, Montan Act, 1951, part 1, section 1, paragraphs 1 and 2, pp. 76, 77.

⁶ILO, Montan Act, 1951, part 2, section 4, paragraphs 1 and 2, pp. 77, 78.

approves the nominees and elects the owners' representatives and confirms the nominations and elects the employers' representatives. Two of the employees' five representatives are nominated by the works council, whereby one representative must come from the group of salaried employees and the other from the group of wage-earning employees. It is interesting to note that the unions concerned can veto the nominations.⁷ The remaining three board members, i.e., the two further employee representatives and the external, additional member for the labor bloc, are nominated by the unions, with no veto power for the works council. Altogether, only two of the employees' five representatives on the supervisory board must come from the firm under consideration. In addition, labor's direct preference is restricted by the union's veto right.⁸

The Montan Act also stipulates the nomination of the so-called neutral member, chosen by the directly elected members of the supervisory board. This eleventh member--the fifteenth or the twenty-first member for extended boards, cases that will be considered shortly--deserves special attention. The neutral member will be elected by majority vote of the board members, whereby at least three of the

⁷ ILO, Montan Act, 1951, part 2, section 6, paragraphs 1-5, pp. 78-79.

⁸ Thomas Kennedy, European Labor Relations (Lexington, Massachusetts: D.C. Heath and Co., 1980), p. 186.

employees' and three of the shareholders' representatives have to support his election. The notion behind the concept of the neutral member is to prevent possible stalemate situations and to endorse the "public" interest in the decision-making process of the modern capitalistic enterprise.⁹

In accordance with West German corporate laws, the supervisory board appoints the management board. The supervisory board elects the so-called labor director, a full and equal member of the management board but depending in a special way on the trust of labor's representatives. The labor director cannot be elected against the votes of the majority of the employees' members in the supervisory board.¹⁰ But the law does not specify in a concrete and clearcut way the labor director's tasks and responsibilities. Only by assigning distinct areas to the different members of the management board is the scope of activities for the labor director implicitly demarcated. In practice, the labor director is responsible for personnel and social matters.

In previous discussion it was assumed that the supervisory board had eleven members. If a firm's nominal capital exceeds 20 million DM (approximately \$10 million U.S.), the maximum number on the board is fifteen. If the nominal

⁹Nabagopal Das, Experiments in Industrial Democracy, p. 73.

¹⁰ILO, Montan Act, 1951, part 3, section 13, paragraphs 1 and 2, p. 82.

capital is higher than 50 million DM (approximately \$25 million U.S.), the electing bodies may appoint twenty-one members. The change in the number of board members involves a change in the composition of the employees' representatives. In the case of fifteen board members, the works council nominates three, viz. one salaried employee and two wage-earning employees, and the unions nominate four members, including the additional external member.¹¹ In the case of twenty-one members, the works council nominates a further wage-earning employee, and the unions have the option for six candidates. The general rules for the election of the neutral member apply without change.¹²

As already mentioned, special historical circumstances combined with massive political pressures forced the first West German government to single out the montan complex for special legislative treatment. The next important legislation, the social constitution for all firms of the private economic sector, the Works Constitution Act, was enacted in 1952, one year after the introduction of the Montan Act, which remains lex specialis on the issue of managerial co-determination for the montan industries.¹³ The Montan Act

¹¹ILO, Montan Act, 1951, part 2, section 9, paragraph 1, p. 81.

¹²ILO, Montan Act, 1951, part 2, section 9, paragraph 2, p. 81.

¹³ILO, Montan Act, 1951, pp. 93-98.

fell short of original union aspirations and their far-reaching implications. There is little wonder that the trade unions considered this legislative framework only as an uneasy compromise or an intermediate step in the process of what they call "democratization" of the economy, a conceptual analogy to their political system.¹⁴

The Works Constitution Act provides general regulations for three different levels of employee participation and co-determination in all firms outside the montan industries with at least five, full-time, adult employees. The first level concerns the independent rights of the single employee on the personal stage, e.g., rights to information, hereing and discussion of issues concerning the workshop place, fields of activity, remuneration, and so on. At the plant level, the act prescribes the institution of a works council, an independent representative body of all employees, which is required if the firm has five or more permanent employees. In addition to this, if the company is employing more than five adolescents (persons under 18 years old), a youth council has to be established.¹⁵

On the decision-making level of the whole firm, finally, participation in management found a general

¹⁴Cullingford, Trade Unions in West Germany, p. 67.

¹⁵The Works Constitution Act of 1952 is reprinted in International Labor Organization, Co-determination in the Federal Republic of Germany (Geneva: International Labor Organization, 1976), hereafter cited as ILO, Works Constitution Act, 1952.

regulation. Under the Works Constitution Act, one-third of the members of the supervisory board must be labor representatives who are elected by the firm's employees.¹⁶

Before the enactment of the Co-determination Act of 1976, which sets apart large firms for special regulation without invalidating the Montan Act, the Works Constitution Act provided the general legislative framework for the co-determination issue in West Germany.¹⁷ In this context, the main provision on co-determination is employees being denied parity on supervisory boards. In its 1952 version and the Amendment of 1972,¹⁸ the act stipulates one-third worker co-determination for corporations and partnerships limited by shares, as well as for limited liability companies, joint companies of mine owners, and business co-operatives with more than five hundred employees. If the business charter does not already require the institution of a supervisory board, such a board has to be established. Exceptions from the one-third co-determination are made for family corporations with less than five hundred employees, for so-called "tendenct" firms (i.e., business firms with political, unionist, denominational, charitable, educational, scientific, or

¹⁶ILO, Works Constitution Act, 1952, division 5, section 76, paragraph 1, p. 96.

¹⁷ILO, Works Constitution Act, pp. 46-72.

¹⁸ILO, Works Constitution Act, 1952, pp. 103-192.

artistic aims or serving purposes of reporting or expressing opinion) and for religious groups and their charitable and educational institutions.¹⁹

If the firm's charter prescribes six supervisory board members, which requires two labor representatives, only employees of the firm under consideration are eligible for the supervisory board. In the cases of more employee representatives, at least two must be members of the respective firm. Additional members may be added from outside, e.g., from the unions. It is interesting to note that under the 1952 Works Constitution Act the unions have neither a right to nominate the internal employee candidates nor a right to advise the employees on that matter. Even the rights of the works council are rather restricted in this context. Having only the same rights as other employee groupings, the works council may simply propose a list of candidates.²⁰ The candidates for the supervisory board are elected by all employees according to the rules of direct proportional voting. The voting procedure does not provide different treatment for salaried and wage-earning employees. The only structural qualification concerning the list of candidates stems from the fact that the federal legislators felt the interests of

¹⁹ILO, Works Constitution Act, 1952, division 5, section 76, paragraph 6, p. 97.

²⁰ILO, Works Constitution Act, 1952, division 5, section 76, paragraph 3, p. 97.

female employees better safeguarded by female representatives on the board. If the firm has more than fifty percent female employees, at least one of the employees' representatives on the supervisory board has to be female.²¹

In the years after the introduction of the Montan Act, the structure of West Germany's economy changed considerably. Certain business firms that had been subject to the Montan Act underwent so many structural changes that they no longer fitted that act's criteria. To prevent these firms from escaping the Montan Act's original legal requirements and thereby becoming subject to the one-third parity requirement of the Works Constitution Act, the federal legislators issued several amendments, collectively referred to as the Co-determination Protection Acts.²²

The first of these amendments was the 1956 Supplement Act on Co-determination (Act to Supplement the Acts on Co-determination of Employees in the Supervisory Boards and Management Boards of the Business Firms in Mining and Iron and Steel Producing Industries).²³ This act is more commonly referred to as the Amendment on Holding Companies. For corporations, limited liability companies, or joint stock

²¹ILO, Works Constitution Act, 1952, division 5, section 76, paragraph 2, pp. 96-97. See Sturmthal, Works Councils, pp. 65-66.

²²Harrison, Workers' Participation in Western Europe, p. 42.

²³ILO, pp. 83-92.

companies which dominate a business firm that falls under the Montan Act of 1951, the Amendment on Holding Companies applies as follows. If the production activities of the dominating firm fall themselves under the criteria of application for the Montan Act, the Montan Act of course remains directly applicable. If this is not the case, but the production of the business combined is significantly determined by the production of firms falling under the provisions of the act of 1951, the holding amendment of 1956 prescribes that the Montan Act applies to the dominating firm also.²⁴

This amendment brings about some important legislative changes from the original version of the Montan Act. It must be recalled that in the Montan Act the works council nominated two candidates for the election to the supervisory board, with a veto right for the unions concerned. The Amendment on Holding Companies introduces a primary election, whereby the electors are directly chosen by the firm's employees.²⁵ The position of the unions is significantly reduced, because with, in general, fifteen members on the supervisory board the unions retain nominating right for only three members (as compared to four according to the Montan Act). In addition to this, the union veto power concerning the candidates of the union's persuasion become more

²⁴ILO, Amendment on Holding Companies, article 1, section 2, p. 84.

²⁵ILO, Amendment on Holding Companies, article 1, section 6, paragraphs 3 and 4, p. 86, 87.

independent of the unions because their removal from office is rendered more difficult.²⁶ A court order, pending submittal of an important reason for the planned removal, must first be realized. However, the position of the shareholders is somewhat strengthened, because under the new provisions the labor director may be elected against the votes of the labor representatives on the supervisory board.

The second amendment to the Montan Act was the 1967 Modification Act to the Co-determination Act.²⁷ The major criteria of the amendment's applicability was if the sales revenue from mining or iron and steel producing activities of a business firm fell below fifty percent of the total revenue during two consecutive years, the dominant firm would, under the Amendment on Holding Companies, drop out of the Montan Act's regulation and would therefore be subject to the less restrictive jurisdiction of the Works Constitution Act, with only one-third worker parity on the supervisory board.

The controversy over decision-making and co-determination of employees in West Germany found its apogee in the Act on the Co-determination of Employees, which was passed in

²⁶ILO, "Amendment on Holding Companies," 1956, article 1, section 10, paragraph 1, p. 89.

²⁷Z. Almasreh, "Institutional Forms of Worker Participation in the Federal Republic of Germany," in The Economics of Co-determination, ed. David F. Heathfield (London: The Macmillan Press Ltd., 1977).

1976.²⁸ This act, a somewhat moderated version of the Montan Act, applies to large firms not affected by earlier legislation. Two observations must be stated at the beginning. First, the Montan Act is not annulled by the legislation of 1976, for this law explicitly excludes those business firms for which co-determination is settled by the Montan Act of 1951 and the Co-determination Protection Acts of 1956 and 1967. Second, the one-third parity provisions under the Works Constitution Act of 1952 still apply for smaller-sized business firms not covered by the 1976 Co-determination Act. As in the case of the 1952 act, so-called tendency enterprises remain exempt. These are here defined as enterprises serving political, coalition political, denominational, charitable, educational, scientific, or artistic designations or purposes that are conducive to information or to expression of opinion as covered by article 5.1.2 of the West German Basic Law.²⁹ Additionally, the Co-determination Act also excludes religious communities and their associated charitable and educational institutions.³⁰ With these

²⁸The Co-determination Act of 1976 is reprinted in ILO, Co-determination in the Federal Republic of Germany, cited hereafter as ILO, Co-determination Act of 1976.

²⁹Article 5, section 1: "Everyone shall have the right freely to express and disseminate his opinion by speech, writing and pictures and freely inform himself from generally accessible sources."

³⁰ILO, Co-determination Act, 1976, part 1, section 2, paragraph 4, p. 47.

exemptions, the act applies to all business firms--i.e., firms employing in general more than two thousand employees--that are operated under the legal charter of a corporation, a partnership limited by shares, a limited-liability company, a joint stock company of mine owners, or a business cooperative.

Indirect voting via an electoral committee will be the rule if the number of employees exceeds eight thousand. As known, indirect voting could favor organized interest groups, e.g., the unions. The employees may, however, pass a resolution for direct voting. Analogously, employees of a firm with an employment level below eight thousand may decide on the technically more efficient device of an electoral committee.³¹ Voting for the salaried and the wage-earning employees will take place separately if no other resolution is passed by the employees. The number of electors for these two social groups is proportional to the respective number of employees in the business firm. As a specific, much debated provision under the 1976 Co-determination Act, the group of salaried employees must include a proportional share of representatives of so-called managerial salaried employees, i.e., the employees with management positions. The number of electoral representatives in the two groups, whereby one includes the sub-group of managerial salaried employees, is

³¹ILO, Co-determination Act, 1976, part 2, division 2, section 15, paragraphs 1-4, p. 57.

qualified by a provision protecting minority interests.³²

The electoral group of the salaried employees must include at least one managerial salaried employee.³³

Electors of the two committees elect members of the supervisory board in separate pollings according to the rules of proportionate voting, but common voting may be decided upon. Once more, a rule protecting minority interests applies, and guarantees in the actual circumstance that at least one member of the group of managerial salaried employees will be on the supervisory board.³⁴

As under the Works Constitution Act, the unions have neither a nominating right nor a veto right with respect to the employees' representatives, all of which must be employed at the firm under consideration. Finally, to benefit the unions' interests, the supervisory board will be completed by two members who are nominated by the unions and elected by the employees' electoral committee.³⁵ In contrast to the election of the representatives of the two different social groups within the firm, the union members are elected jointly

³²ILO, Co-determination Act, 1976, division 2, sub-division 4, section 20, paragraphs 1-3, p. 60.

³³ILO, Co-determination Act, 1976, division 2, sub-division 4, section 18, paragraph 2, p. 60.

³⁴ILO, Co-determination Act, 1976, division 2, sub-division 3, section 15, paragraph 5, p. 58.

³⁵ILO, Co-determination Act, 1976, division 2, sub-division 3, section 16, paragraphs 1 and 2, p. 59.

by secret voting of all members of the electoral committee.

A supervisory board with a total of twelve members is comprised of six representatives for the shareholders, four for the employees, and two for the unions of the respective industry, whereby the election of the employees' candidates is qualified by the provision that at least one member of the group of the managerial salaried employees must be represented on the board.³⁶

The members of the supervisory board elect both a chairperson and a deputy chairperson by a two-thirds majority vote. If a majority is not achieved, the shareholders' members elect the chairman and the employees' members the deputy.³⁷ In general, members of the management board will be elected by a majority of at least two-thirds of the supervisory board. If such a majority cannot be obtained, a simple majority of board members is sufficient. In case of stalemate situations, the chairman of the supervisory board will cast two ballots. It is interesting to note that the new law does not specify any legal provision for election of a labor director.³⁸

The description applies to business firms with in

³⁶ILO, Co-determination Act, 1976, part 2, division 1, section 7, paragraph 2, p. 51.

³⁷ILO, Co-determination Act, 1976, part 2, division 3, section 27, paragraphs 1-3, p. 65.

³⁸But see: ILO, Co-determination Act, 1976, part 3, section 33, p. 68.

general no more than ten thousand employees. Between 10,000 and 20,000 employees, the number of supervisory board members amounts to sixteen, including eight labor candidates, of which only two are nominated by the unions. An additional candidate from the unions will be nominated if the board has a total number of twenty members. This will be the case if the total employment level is greater than 20,000 employees.³⁹

At least a few observations are in order about this most complex legislative machinery. The FPD was the principal proponent of a separate seat on the worker side for the managerial staff. The trade unions considered it simply a method for assuring an employer-point-of-view majority on the supervisory board, and it would take considerable anti-union partisanship to see this as anything else.⁴⁰ The SPD, on the other hand, seemed to have been in favor of indirect elections because it believed the trade unions would be able to control the process for nominating electors. The employer side generally favored direct election, as it favored any sort of move that would reduce the influence of unions over the worker representatives.⁴¹

Though it might appear that the legislative provisions of the 1976 act do not necessarily derogate from the principle

³⁹ILO, Co-determination Act, 1976, part 2, division 1, section 7, paragraph 1, p. 50.

⁴⁰E.C.M. Cullingford, Trade Unions in West Germany, p. 83.

⁴¹Ibid.

of full-parity co-determination, the sections dealing with the chairpersonship of the supervisory board and with the method for breaking tie votes constitute such clear derogations. The chairperson and the deputy chairperson of the supervisory board must be elected by a two-thirds majority; assuming that in most cases a corporate manager is to be chairperson, they must be able to carry with them at least some worker votes. The same would hold true for the deputy chairperson, who might well be an employee representative. However, if two-thirds majority cannot be obtained, the shareholder representatives elect the chairperson and the employee representatives elect the deputy chairperson.⁴² Such an arrangement still might leave the board facing a tie vote. Then a second vote is taken and if the result is again a tie the chairperson has the tie-breaking vote. At this point it might be advantageous to observe that the coal and steel co-determination law (Montan Act) provides for parity representation, though it also adds a "neutral" member who could break ties. However, in the over thirty years of operation of the Montan Act, there has been no formal tie-breaking action by the neutral members. Critics might argue that no clearer proof is needed of the co-opting of the trade unions in the FRG; but the evidence also permits the observation that frequent recourse to the neutral

⁴² ILO, Co-determination Act, 1976, part 2, division 3, section 27, paragraph 2.

tie-breaker would quickly lead to very difficult industrial relations problems for which mechanical tie-breaking devices will be of little use.⁴³ Here, then, is the crux of the concern against any notion that the 1976 legislation constituted parity co-determination. The full scope of the argument that full-parity co-determination would alter the system of property rights in the FRG, that it would be in violation of the Basic Law will be examined in Chapter Four.

A fuller understanding of the 1976 legislation can be obtained by viewing it as simply another step on the road to industrial democracy. The parentage of the 1976 act is clearly shown by the Montan Act of 1951 and the 1952 Works Constitution Act. Both acts have been amended several times and both continue in force for the types of enterprises covered by them.

In the Montan Act's legislation there is apparent parity on the supervisory board, but the addition of a neutral member provides a tie-breaking mechanism; however, that could rebound to the advantage of labor as well as management. One should note that the selection of the supervisory board has to pass through the annual shareholders' meeting, with the works councils and the unions making their recommendations to this shareholder instrument. The principle of outside members of the supervisory board

⁴³H.A. Clegg, A New Approach to Industrial Democracy (Oxford: Basil Blackwell and Mott, Ltd., 1960), p. 51.

nominated by the trade unions was established here and was incorporated into the 1976 law, but only after a prolonged struggle. From the Montan legislation has also come the institution of the management board's labor director, who is nominated by the trade unions and has personnel policy responsibility.⁴⁴ The 1976 law divorced the labor director from union nomination and personnel policy responsibilities, though the SPD and the CDU are embroiled in a controversy over the intent of the legislation in this respect.⁴⁵

The passage of the Montan Act marked the high-water mark of the push toward parity co-determination. The 1952 Works Constitution Act provided for considerably less than its predecessor. Employee representatives were limited to one-third of the supervisory board membership and all the labor members had to come from within the enterprise; nobody on the management board directly represented labor in the day-to-day operation of the enterprise. One would be hard pressed to categorize the 1952 legislation as anything but a trifle tossed labor's way, and there is little evidence that one-third representation satisfied either the trade unions or that it had a significant impact on industrial relations. After 1966, and particularly after 1969, the social-liberal

⁴⁴F.E. Emery and Einar Thorsrud, Form and Content in Industrial Democracy, p. 46.

⁴⁵In fact the 1976 Act was challenged and delayed in federal constitutional courts; it didn't actually become fully effective until 1979.

coalition tried to strengthen the position and powers of the works councils while also pushing for full-parity co-determination. They succeeded in the former endeavor--there being intra-coalition agreement on the works councils--but clearly failed in the latter.

Consequently, the legislative machinery for industrial democracy in West Germany is varied. The variations in industrial democracy reach all the way from co-determination in small enterprises employing less than five persons, to the 1976 Co-determination Act which, it is estimated, will apply to about six hundred enterprises, employing over four million workers.⁴⁶ Of the five laws, three provide for employee representation on supervisory boards, though taken collectively they employ only a minority of the work force. The other two laws provide for employee representation through the by now traditional form of the works council, whose significance in industrial relations should not be minimized.⁴⁷

The public service sector utilizes a comparable device, the Personalrat (personnel board), which covers much the same ground as the works council in the private and semi-public sector. But with all the West German publicity about co-determination--the benefits claimed for it by its

⁴⁶Z. Almasreh, "Institutional Forms of Worker Participation in the Federal Republic of Germany," p. 111.

⁴⁷H.A. Cegg, A New Approach to Industrial Democracy, pp. 103-105.

proponents and the dire consequences predicted for political freedom and the survival of the capitalist order by its opponents--well over half (two-thirds if the public service sector is included) of the work force do not enjoy the benefits of this form of industrial democracy. They must be satisfied with representation through the works council or are deprived of any formal participation in the decision-making process whatsoever.

Possibly one might gain some benefit from a more detailed examination of existing legislation, but whatever exists now or is planned for the future functions or will function in the legislative, structural framework of the FRG's polity, society and economy. Thus before a full critical evaluation of co-determination in West Germany can be achieved, it will be necessary to examine the effect that co-determination has had on the institutional structure of that nation.

CHAPTER IV

CO-DETERMINATION IN WEST GERMANY: INSTITUTIONAL
CHANGE AND EFFECTIVENESS

Aspects of institutional transformation that bear most directly on the nature of industrial democracy in the FRG are discussed below in decreasing order of importance with regard to co-determination. These are clearly not mutually exclusive aspects, but taken in their entirety should provide a reasonably adequate understanding of the status of industrial democracy in the context of modern West Germany.

West Germany and Democratic Corporatism

There is substantial evidence to support the conception of West Germany as a democratic, pluralistic society. The question that remains is whether the movement toward co-determination adds to the democratic quality of West German political structures.¹ To the extent that the 1976 Co-determination Act does not provide for full-parity co-determination, capitalist company law has not really been superseded. But the notion that in moving toward parity one moves toward

¹Robert J. Kuhne, "Co-determination: A Statutory Restructuring of the Organization," The Columbia Journal of World Business (Summer, 1979), 17-25.

some new synthesis is basic to the present analysis of institutional change in the FRG.

Legally anchored and government-sponsored labor management relations take other forms than co-determination. For example, in the days of the Great Coalition, under the impact of an economic crisis during 1969, the Konzertierte Aktion (Concentrated Action) was developed, which is tripartite machinery for labor, management and government to discuss economic trends and to shape short and intermediate term wage and price policies.² Labor has complained that the Aktion always produces much talk about how wages must be kept in check but often says little and does less about prices. Yet the government does not simply impose itself on the two partners in industrial relations, and the machinery of the Konzertierte Aktion contributes in some measure to the persistence of corporative perspectives in West Germany. It is not possible to make an incontrovertible case for the structuring of West German institutions and organizations along corporative lines, for very traditional state controls exerted through the central West German banking structure limits a strictly corporative framework.³

²A.J. Ryder, Twentieth-Century Germany: From Bismarck to Brandt, pp. 511-513.

³Ralf Dahrendorf, "The New Germanies: Restoration, Revolution, Reconstruction," Arend Lijphart, ed. Politics in Europe: Comparisons and Interpretations (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1969), pp. 233-235.

It can be safely stated that undeniable clout continues to be exercised by big business and industry in the economic realm and influences the continuation of conservative qualities of West German political patterns.⁴ Furthermore, proposals for investment control by the central state authority would certainly undercut the political pluralism and social structuring of the FRG; proponents of such state control and direction of investment generally are found on the radical-to-moderate left, either inside the SPD or outside of it. However, to the extent that corporative features (i.e., functional associations and organizations, legally and rigidly applied patterns of participation within a defined context) can be identified in the Federal Republic of Germany, they would tend to be strengthened and reinforced by co-determination.

Change in West German Politics

Viewing the Federal Republic of Germany from a political perspective, the seventeen year reign of Konrad Adenauer and his immediate successors made West Germany into what may be called a "CDU state," that is to say, a conservative state, socially, politically and economically. Certainly there is evidence of the abandonment of conservative materialistic attitudes due to generational cleavage in West Germany as in

⁴Dahrendorf, Society and Democracy in Germany, p. 417.

other European nations, but the pervasive conservatism of West German society and politics is not really much in dispute between those who take pride in it and those who condemn it. In this CDU state the SPD has never been able to gain a clear majority of votes and govern the nation unimpeded by coalition ties. Radical critics will probably suggest that even as the sole majority party the SPD would not have governed much differently from the record it has made since 1966; no reliable response to such a proposition is possible. But there is no doubt that the slow and cautious advance toward parity co-determination must be traced in part to the inherent conservatism of West Germany and to the continuing need for coalition politics; the often bitter conflict between the coalition partners as the result of the FDP's holding of a white-collar/executive's representative on the supervisory board is evidence of the tension within the coalition.⁵ The problems of the SPD in developing a consistent policy line in the socio-economic field can also be traced to intra-party tensions between the party's mainstream personnel in city halls, state and federal parliaments, and the federal cabinet on one hand, and the party's youthful constituency on the other.

Given the degree of inter-party in-fighting, it is not surprising that the SPD was unable to make good on most

⁵ Ronald Inglehart, "The Silent Revolution in Europe: Intergenerational Change in Post-Industrial Societies," The American Political Science Review, XLV (December, 1971), 991-1017.

of its major reform promises of the 1976 election. It failed completely on profit-sharing and land use legislation, and the need to compromise on parity co-determination was so extensive that SPD trade unionists were taunted by the left wing of the CDU for succumbing to trade union and party discipline and voting for a co-determination act that was unacceptable to even the small CDU trade union faction.

Co-determination and the Constitutional
Structure of West Germany

A comment about chances for co-determination in British enterprises noted that if West German trade unions, after a twenty-five year struggle, had been unable to achieve it, how much less the chances would be in Britain.⁶ Such a comment is misleading not only because it fails to take into account the complex political situation faced by the SPD, the West German equivalent of the British Labor Party, but because it also fails to take into account the profound differences in the constitutional framework of these two political systems. While in Britain, parliamentary supremacy would permit Parliament to enact whatever sort of co-determination legislation would be politically feasible, that is, by a clear labor party majority and Labor-Trades Union

⁶Cary L. Cooper, "Employee Participation and Improving the Quality of Working Life," Derek Torrington, ed. Comparative Industrial Relations in Europe (London: Associated Business Programs Ltd., 1978), pp. 74-76.

Congress (TUC) agreement of the nature of such legislation, comparable legislation would, and indeed does, face a number of serious constitutional obstacles in West Germany.

These constitutional obstacles are of two types: procedural and substantive. The existence of a Federal Constitutional Court and the availability of judicial review make it possible for opponents and critics of certain aspects of co-determination to raise constitutional issues in the appropriate federal institution; one might add that state (Land) governments controlled by anti-co-determination forces could also raise constitutional issues arising from the federal nature of the distribution of power in West Germany.

The impetus for substantive constitutional issues against full-parity co-determination was based on two arguments: that full-parity co-determination would interfere with the protection of private property, contained in paragraph fourteen of the Basic Law;⁷ and that the presence of an equal number of employee and shareholder representatives on the supervisory board would not only alter the nature of collective bargaining between capital and labor as equal partners, but it would also interfere with labor's rights of free association, contained in paragraph nine, section three,

⁷Basic Law, Article 14: (1) "Property and the right of inheritance are guaranteed. Their content and limits shall be determined by the laws."

of the Basic Law.⁸ Considering the fact that the freedom-of-association provision was meant to protect bona fide trade unions against company unions, it seems more than a little peculiar that present day opponents of co-determination now express such tender concern for the independence of trade unions, which might be threatened if their members sat on company supervisory boards. This mentioning of issues of constitutionality involving co-determination is to highlight still another structural element in the West German situation that has or might have an impact on the political nature of co-determination.

West German Trade Unions: Co-determination
and Collective Bargaining

Though West German trade unions are no longer elements of a social movement that advocates workers with a total socialist environment from which much of the bourgeois world and culture are excluded, they are still central institutions of working class loyalty and identity. Their relationship with the SPD, especially when the party is in power, is not always an easy one, but discipline on the part of trade unions in Bonn remains strong--in no small degree because trade unions claim their share of seats in the

⁸Basic Law, Article 10: (3) "The right to form associations to safeguard and improve working and economic conditions is guaranteed to everyone and to all trades, occupations and professions."

Bundestag and federal cabinet. It is this strength and discipline that are bulwarks of the effectiveness of collective bargaining as the principal instrument for making and enforcing employee demands.

Given the corporatist quality of social organization in West Germany, there is general acceptance of collective bargaining as a formal and legitimate decision-making process in West German corporatism.⁹ Whatever is done through works councils or through employee representation on the supervisory boards is always done within the confines of collective bargaining between labor and capital, a process in which government often intervenes indirectly, with the nature of the intervention depending, obviously, on who controls the federal political machinery. But such intervention is generally considered illegitimate, because legitimacy of collective bargaining, strikes, and other methods of resolving employer-employee conflict, are fully accepted not only in the private but the public sector as well.

Though collective bargaining has been concerned with the by now traditional elements of industrial relations, some of the progressive unions, the metal workers among them (a union which includes all automobile workers in the FRG), have moved on to the issues of quality of the workplace, with

⁹Thomas Kennedy, European Labor Relations, pp. 178-181.

notable successes on this front.¹⁰

Evidence of the strength of trade union discipline and effectiveness, as well as for trade union responsibility, can be seen in West Germany's leading other industrialized countries in low incidence of strikes, moderation in wage increases, higher worker productivity, etc. But the unions are intent on extending their involvement into economic decision-making by pressing for formal trade union participation in the institutionalization of industrial democracy.

It is this increased involvement that has generated a heated, sometimes vicious debate over the possibility of realizing the "trade union state" that classical liberals and conservatives see just over the proverbial "horizon." The strong evidence that West German employees in crisis conditions turn to conservative, if not right-radical, parties, left-radical trade union bureaucrats might soon find themselves as so many generals without the necessary privates to do battle. The trade-union-state debate testifies to the significance of trade unions, their collective bargaining, general social policy concerns, and the manner in which the issues of co-determination fits into the general framework of the trade unions as one of the major corporative pillars of the West German regime.

¹⁰ Z. Almasreh, "Institutional Forms of Worker Participation in the Federal German Republic," p. 97.

There is one other aspect of trade union involvement in industrial democracy that deserves some consideration. Given trade union power in the general area of industrial relations, their influence over the existing works council machinery, the possibility of future profit sharing schemes in which trade unions would administer employees' shares, and central government investment control by a government in which trade unions play a major role, critics may be justified in raising the issue of dominant representation. If, under such conditions, employees (trade unions) have numerical parity on supervisory boards, the total impact of trade union power would overbear the voice and influence of shareholders and managers.¹¹ However, realization of such a possibility might be cut short by CDU success in a forthcoming election--not at all an unlikely possibility--in 1984 given the narrow margin of the SPD-FPD victory in 1980.

West German Co-determination and the European Community

Presently and in the immediate future, establishing systems of co-determination within the various nations of Western Europe will be determined chiefly by domestic factors. Currently there exists profound variations in the approaches to industrial democracy in Western Europe. But one ought to

¹¹Gerard Braunthal, The Federation of Germany Industry in Politics (Ithaca, New York: Cornell University Press, 1965), pp. 270-275.

keep in mind that developments are under way on the supranational level that will eventually create constraints on national decision-making in that context.

Though a common European company law is still far from being realized, once such harmonization has been achieved, the manner in which employees will be able to participate in company decision-making will then have to be contoured into a supranational instrument. It might be that demands for co-determination that cannot be obtained in a purely national context could be secured under the pressure of a common front of transnational trade unions and a common European company law.¹²

Co-determination as a National Symbol

The traditional trade union perception of co-determination in West Germany has always been that of a means to an end. Generally speaking, trade unions have taken an instrumental, utilitarian view of such measures. Their perception has also eschewed a view of co-determination as a way of transforming the existing social order. Rather, it has lead to a more equal relationship between labor and

¹²See George Sanderson, gen. ed., Industrial Democracy Today: A New Role for Labor (Toronto: McGraw-Hill, 1979), Recent Developments in the International Work Environment, by Eric Trist, pp. 56-62; Thomas Kennedy, European Labor Relations, pp. 377-394; Roger Harrison, Workers' Participation in Western Europe, pp. 7-10; Derek Torrington, ed., Comparative Industrial Relations in Europe, The Future of Industrial Relations in Europe, by Jack A. Peel, pp. 253-269.

capital and not to the elimination of the capitalist order as it is known. These have been the standard positions of the DGB and it is difficult to interpret such pronouncements as any sort of revolutionary intentions.

Taking into account the generally moderate ideology of most of the DGB's constituent unions and of the majority of the SPD, and considering also the development of West Germany's economy as one of the healthier of the capitalist economies, albeit functioning in a corporative framework of legally defined parameters of operation, one is tempted to inquire what the co-determination debate has been all about. Has co-determination become a historic demand of the labor movement that no one has the courage to remove from its place of honor? Has co-determination variations, either in the coal and steel version or its works council version really improved the life of the work force? Has it really served to constrain the capitalistic, autocratic managers from their preferred alternatives in industrial relations and economic policy?

In short, have the voices of the working man and his representatives received a genuine hearing, and have employee representatives on the supervisory boards and the elaborate machinery of works councils altered economic policy and industrial relations in the Federal Republic of Germany? Unless unambiguous answers can be given to these questions--a doubtful possibility--the record of the struggle over

co-determination, at least in the years since 1969, has many of the earmarks of a futile exercise in symbolic representation. To say so is not to denigrate the importance or significance of symbols in the political process. At the same time, if co-determination has only become a symbol, might not the trade unions and the SPD have diverted their energies in another direction, if they wanted to have a greater say in West German social policy and economic decision-making?

CHAPTER V

PERIPHERAL ISSUES OF INDUSTRIAL

DEMOCRACY IN WEST GERMANY

The assumption of a homogenous, mono-cultural work force is common to most writers on employee participation, self-management, and industrial democracy. Yet the industrial work forces of the capitalist western world are increasingly heterogeneous, not only in terms of race and ethnicity, but also in terms of age, sex, religion, occupation, education, technology, and industry. The intent of this chapter is to initiate discussion and raise questions concerning some of the peripheral, yet complex issues which need to be studied if one is to understand the inter-relationship between a heterogeneous work force and industrial democracy in West Germany. West German experience will be primarily drawn upon but the issues raised are relevant to other advanced industrial nations.

Among the most neglected people in terms of development and participation in industrial democracy are the migrant and immigrant workers. These people have been treated with little consideration by the governments, employers, and the many trade unions in the Federal Republic of Germany. The traditional methods developed to protect

industrial employees against accidents, disease, and exploitation are usually inadequate, inappropriate, or simply not applied to foreign workers. Ideas, policies, and proposals for industrial democracy developed by scholars, governments, managers, and trade unions tend to ignore the foreign workers, or assume they will become absorbed or assimilated, or at best they will be given token formal recognition without making provisions for the special difficulties they confront in being involved in any form of industrial democracy.

What then are some of the key issues which need to be examined in relation to migrant and immigrant workers and industrial democracy? Although West Germany probably represents a moderate case in terms of diversity of national, linguistic, and cultural backgrounds in its industrial work force, the issues raised are likely to be relevant to other countries with large migrant work forces.

However, even moderate diversity in West Germany's industrial work force makes industrial democracy a very complex issue in many plants, enterprises, and industries. For example, in one plant in Dortmund, in a work force of around 430 employees, there are members of thirty-nine national groups other than German.¹ One large conglomerate at the end of 1976 had sixty-nine national groupings in its work force. The percentage of migrants and the national mix

¹Kennedy, European Labor Relations, pp. 228-229.

varies considerably between the different production units of industry. The work force in the largest plant in the basic steel industry comprises nearly seventy various countries of origin. The ethnic diversity is even more involved. For instance, Yugoslavs in West Germany come from such diverse cultural and often mutually hostile groups as Croats, Serbs, Macedonians, and even Albanian (from the Yugoslavian republics of Montenegro and Macedonia).²

If foreign workers are to be able to participate fully in industrial democracy, then they must develop appropriate written and verbal skills in the German language. Reliance on interpreters may do more to increase the power and influence of interpreters than the power and influence of foreign workers. Sweden is the only nation of Western Europe where the law requires an employer to provide newly arrived foreign workers with opportunities to learn the local language in their first year of employment. However, there seems to be some question as to how many employers in Sweden are fulfilling this particular legal requirement.³ Elsewhere, employer language training for foreign workers tends to be inadequate and narrowly related to technicalities of job requirements and not to developing fluency for the

²Demetrios G. Papademetriou, "European Labor Migration: Consequences for the Countries of Worker Origin," International Studies Quarterly 22 (September 1978), 377-409.

³Jenkins, Job Power, pp. 258-273.

levels of understanding of issues involved in industrial democracy. Also, many adult foreign workers have little incentive to learn the language, since they have little contact with people outside their linguistic and cultural groups.⁴

Mere fluency in the language is not in itself sufficient to allow people to participate in discussions which require an ability to understand and evaluate ideas, concepts, and processes, particularly when these cannot be related to foreign workers' education or experience. As an example, foreign workers who have migrated to West Germany from southern or eastern Europe cannot be expected to understand the complex nature and procedures of the long-established West German industrial institution of co-determination.

Additionally, many of these foreign workers come from authoritarian cultures where they have been educated with values and expectations which discourage participation in democratic processes, and even penalize individuals who suggest or espouse them. It is hardly a firm basis for the development of industrial democracy. A further problem is that many foreign workers are unaware of, or confused over, just what are their democratic and industrial rights. Some foreign workers do not realize that they have the right to vote in union elections even though not a citizen in the

⁴Anthony Trawick Bouscaren, European Economic Community Migrations (The Hague: Martinus Nijhoff, 1969), passim.

nation of employment.

In a multi-ethnic work force certain individuals may gain power and influence because they function as links between management and particular ethnic employee groups. As an example, a pay clerk may be seen by many foreign workers as powerful and influential because he is responsible for giving them their paychecks and therefore must be respected. It is common practice for some companies to employ multilingual people in this position and to use them also as interpreters and interviewers, thus increasing their power to influence both management and foreign workers. Under any system of industrial democracy such people could control many votes.

Another important societal group which tends to be relegated to the periphery by writers and decision-makers on industrial democracy in West Germany is that of women in general, and married women in particular. The members of this group have greatly increased their numbers in the work force of West Germany in recent years. In West Germany the participation rate of married women in the work force has doubled in the last thirty years to nearly forty percent. Yet their participation in union decision-making processes and senior management boards is almost negligible. The problem is even more serious for foreign married women whose participation in the work force is even higher than that of

West German born married women.⁵

The participation of women in the processes of industrial democracy is severely restricted by their socialization and the fact that they often carry the onus of two full-time occupations: one as an employee and one as a housewife and mother. Any attempts to improve the position of women in the processes of industrial democracy must therefore acknowledge the considerable diversity in the socialization, cultures, and domestic roles of women in a multi-ethnic and multi-racial work force.⁶

The majority of migrant and immigrant women have little or no understanding of industrial processes and the wider economic, social, and political systems of an industrial community. They often carry out the dirtiest and most menial tasks, yet they fear the loss of even these jobs. Their sense of isolation and powerlessness is compounded daily, with little hope for any change in the situation.

Concepts of industrial democracy normally assume that the people understand and agree with the processes of democracy and are free and willing to express opinions and assume some responsibility for decision-making. Such assumptions are often contrary to the values and customs of many foreign

⁵Gabriel Almond and Sidney Verba, gen. ed., The Civic Culture Revisited (Boston: Little, Brown and Co., 1980), Changing German Political Culture by David P. Conradt, p. 255.

⁶Jenny Dorling, "Women and Work," in Comparative Industrial Relations in Europe, ed. Derek Torrington, pp. 194-212.

households. For example, Turkish women who are culturally conditioned not to speak up, and certainly not to converse with males other than their husbands, would face enormous problems of role conflict if they were allowed to participate in industrial democracy.

The insensitivity of some people to role conflict may be exemplified by a female personnel officer (herself a foreign worker) who admonishes Turkish men for their treatment of their wives, and admonishes the wives for accepting their culturally conditioned role. Admonition from a person in such a position of perceived power adds considerably to a foreign worker's fears and anguish and probably reduces their participation in any decision-making processes.⁷

A crucial aspect of the current world recession, particularly in West Germany, is that powerful and privileged groups openly assert their rights to maintain their standard of living. These groups include secure public servants and people in highly protected businesses and industries. The costs of the current recession and consequent structural adjustments in the economy are therefore inequitably distributed, the burden falling largely on the increasing number of unemployed.

Will industrial democracy further disadvantage the unemployed by excluding them from access to important

⁷Ralf Dahrendorf, Society and Democracy in Germany, p. 67.

decisions, particularly those relating to employment? Will industrial democracy further help the existing work force to protect themselves through employment security agreements or tenured appointments, to the detriment of those trying to enter the work force? It is especially important to the increasing number of youth who cannot gain access to employment. However, those youths lucky enough to have jobs are only indirectly represented on the works councils of their companies by a youth delegation.⁸

Industrial democracy and employee participation should not be limited to the mainstream of the industrial work force. While the above-mentioned groups are only a minority of the work force, it is in the best interest of industrial harmony for all workers to participate equally and equitably. The heterogeneity of the West Germany industrial work force and its parent society has been beneficial to industrial unity. But unity is only as cohesive as the components desire it to be. Chapter Six, then, will serve as a conclusion and as an evaluation. A conclusion, in the sense of summarizing the significance and relevance of co-determination in West Germany, and for the rest of the Western world. An evaluation, in that it undertakes a critical examination of the thesis for its affirmability or its dismissal.

⁸ILO, Works Constitution Act, 1972, part 3, division 1, sections 60-71, pp. 134-139.

CHAPTER VI

CO-DETERMINATION AND PARTICIPATION: THE
THESIS AFFIRMED--OR IS IT?

Answers to three questions have been sought: what has been the West German record in achieving co-determination in industrial decision-making? Why have particular versions of co-determination been adopted in the Federal Republic of Germany? And finally, what difference has it all made in the structure and functioning of the West German polity and in the nature of political participation in particular? Answers to the first two of these questions have taken up the bulk of the thesis; some consideration of the third query will follow. However, before turning to this task, it is necessary to summarize briefly what has been said with regard to the first two.

Various forms of co-determination in effect in the Federal Republic of Germany range from no co-determination in very small establishments to the 1976 version of balanced, but not parity, co-determination in large corporations employing more than two thousand employees. There are three types of co-determination in which employee representatives sit on the supervisory boards, in equal numbers in the newly adopted law and in the Montan version of 1951, and in less

than equal numbers in the Works Constitution Act version of 1952. Thus employee representatives are either clearly outnumbered, or where they are equal in number of shareholder's representatives, the latter effectively can override the voice of the employees.

In the public service and in the 1952 works council version employees are limited to representation on the personnel boards and the works councils, respectively, though one must not minimize the significance of this representative device for inserting the employees' (and their unions') voice into industrial decision-making, covering working conditions and the nature of work and of the workplace in the widest sense.¹ There is also a strong record of employee consultation by management on a broad range of issues, as well as a strong sense of worker solidarity behind the works councils.

The reasons why a complex social relations pattern like co-determination takes a particular form in a given national society are always multifarious and most difficult to disentangle. An attempt has been made to specify two sets of contextual conditions. Thus, historical forces reaching back one hundred years and more, plus contemporary economic and political structural elements have combined to

¹Richard J. Willey, Democracy in the West German Trade Unions: A Reappraisal of the Iron Law (Beverly Hills: Sage Publications, 1971), pp. 4-13.

give West German co-determination its particular quality.

The specific form of co-determination, which has focused on having employee representatives sit on company boards, has been shaped by the German labor movement's historic preference for evolutionary over revolutionary methods of social change and by strong bureaucratic tendencies that have reinforced its evolutionary preferences. Concurrently, the strength of the Works Council Movement in post-1918 Germany made this form of employee representation an important weapon in the arsenal of the German labor movement.² Yet even here the evolutionary and bureaucratizing tendencies of the movement quickly stripped the Works Council Movement of its broader political aims and of its radical political ambitions.³

The manner in which co-determination evolved after 1949 has been strongly influenced by the sort of structural variables analyzed earlier. The first three of these-- collective bargaining, pluralistic corporatism, and the political dynamics of West Germany--clearly have had a decisive influence on the manner in which co-determination has developed and functioned in the Federal Republic of Germany.

²H.A. Clegg, A New Approach to Industrial Democracy, pp. 3-17; Paul Blumberg, Industrial Democracy: The Sociology of Participation (New York: Schocken Books, 1968), pp. 139-167.

³Lewis J. Edinger, Politics in Germany: Attitudes and Processes (Boston: Little, Brown and Co., 1968), pp. 226-227.

The acceptance of collective bargaining as a legitimate form of industrial relations strongly supplements the representation of employees on the boards and in the works councils, thus adding to West Germany's socio-economic corporative structuring. In the context of the three structural elements, co-determination may be seen as one of several weapons at the disposal of the labor movement to make demands on behalf of its members.

The fourth factor, West German political dynamics, serves more to indicate the parameters--or weaknesses--of the West German labor movement than its strengths. The inability of the SPD and the trade unions to muster a clear majority in the Bundestag for their programs is clearly a limiting factor, especially as long as these twin organizational giants remain committed to democratic politics and to the ballot box.⁴ The obstacles represented by the West German basic law would become insignificant in the face of a determined majority thrust. But here, too, the SPD and the trade unions might be confronted with internal dissension, should they try to use their majoritarian strength to override in an undemocratic manner minority views voiced on the national level or those opposition views that draw their power from the operation of the federal system. How much direct impact

⁴John D. May, "Democracy, Organization, Michels," The American Political Science Review 59 (June, 1965), pp. 417-429.

the developments on the supra-national level--in the European community and beyond--have on the shape of co-determination in West Germany is relatively easy to assess: very little, at least for the short term. But even in the long term the problems of putting the DGB under the same roof with France's Confederation General du Travail (CGT) and Italy's Confederazione Generale Italiana del Lavoro (CGIL) rather boggle the imagination.

Can it be said, then, with any degree of confidence that West German co-determination has been a significant instrument in the hands of West German labor in its effort to transform the country's economy and political relations in conformity with its goals? Certainly one will never be able to say how different economic and political relations, defined broadly, would have been if the labor movement had concentrated solely on collective bargaining in the economic realm and welfare legislation in the political arena.

What is suggested here is the German (or since 1949 the West German) version of industrial democracy clearly bears the stamp of the peculiar national experience of that particular labor movement. But the achievements on the path to industrial democracy so far are more nearly system maintaining rather than system transforming in nature. This has been so not only, or perhaps not even chiefly, because of the political and economic constraints imposed on the labor movement, but because the movement--at least since 1949--has

moved along almost entirely within a moderate, evolutionary ambience. What has been achieved, though it is quite far removed from full-parity co-determination, does not do as much violence to the labor movement's realistic goals as the spokesmen for that movement would declare. Simultaneously--and without meaning to contradict what has just been said--even if full-parity co-determination had been achieved, it would not have been the occasion for a radical transformation of West German society, economy or politics, even though the DGB is clearly on record with its determination to continue its push for full parity.⁵

Thomas Mann constructed a conversation between Consul Buddenbrook and his employees during the revolutionary days of the 1848 republic. Sensing the political dissatisfaction of his employees he asks them: "What do you want? Tell me." To which one of them replies: "Well, Consul Buddenbrook, all I can say is that we want a republic." "But we already have a republic, you stupid man," Buddenbrook replies with some exasperation. "Well, Consul Buddenbrook," the employee's response comes, "in that case we want another one."⁶ A sizable segment of party and trade unions must surely feel that very same way about the 1976 co-determination

⁵Z. Almasreh, "Institutional Forms of Worker Participation in the FRG," pp. 90-94.

⁶Thomas Mann, Buddenbrooks, trans. H.T. Lowe-Porter (New York: A.A. Kopf, 1964).

law: if that is co-determination then we simply have to have another one. But given the West German society's record with republics in 1848 and later, one would no more be justified in expecting radical results in the realm of economic democracy than in that of political democracy. Most observers agree that, with the adoption and the coming into force of the 1976 Co-determination Law, the issue of industrial democracy has been, for all practical purposes, removed from a top position on the FRG's political agenda.⁷ But it says less about the intrinsic significance of West Germany's methods for insuring industrial democracy than about the conservative nature of the Federal Republic of Germany.

Thus it would seem that the prospects for full-parity employee participation in West Germany are not very bright. Any further efforts to limit the power of the managers/shareholders will surely be resisted strongly. Yet the West German labor movement has achieved a considerable degree of influence over economic decision-making through collective bargaining and works councils, as well as through the working of the corporatist machinery.

Is this experience relevant to other post-industrial societies? Three very tentative suggestions might be advanced. First, formulas for industrial democracy, like those

⁷F.E. Emery, "The Next Thirty Years: Concepts, Methods and Anticipation," Human Relations 20 (August, 1967), 199-235.

for political democracy, are just that: instrumentalities that must be made to work in a complex environment and whose success depends chiefly on the manner in which these instrumentalities fit into the larger political context. Second, socio-economic corporatism along the lines of the West German version is likely to be a conservative influence; that is to say, it will serve to maintain the social and political status quo, even though it might permit a large degree of technological innovation. These systems will look very modern in the technological sense but will tend to maintain a very traditional socio-political set of institutional arrangements.

Third, in such a corporatist system the technocrats will more likely remain confined to their realm of expertise and will not reach out for power in other realms, as might be the case in non-corporatist systems. Such a hypothesis runs contrary to much of what is being said about the growing power of technocrats--military or civilian--in various parts of the world. It would seem that in socio-economic corporatism wedded to a pluralistic political arrangement, as is the case in West Germany, the technocrats will confine themselves to their realm of expertise, for the corporative structure vests them with considerable influence in such a role.⁸

Because the Federal Republic of Germany might be what psychologists call a strong deviant case, it might be

⁸David Jenkins, Job Power, p. 300.

difficult to construct a sound framework for comparative analysis with other industrializing or post-industrial nations. However, there is little that deserves more attention than gaining an understanding of the inter-action between demands for industrial democracy and the increasing tendencies toward socio-economic corporatism in such nations. It is this concern that has justified the present analysis and that ought to encourage further exploration elsewhere, in the form of empirical studies and comparative analysis.

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